IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5345 OF 2006

1. Ispat Industries Ltd. & Anr.] .. Petitioners

Versus

1. State of Maharashtra & 4 ors.] .. Respondents

Mr. V.A. Thorat, senior counsel with Mr. Milind Sathe, senior counsel and Ms. Shruti Banga i/b Raj Baid for the petitioners.

Mrs. Jyoti Pawar Addl. G.P. for the respondents No.1 to 5.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 04TH JULY, 2007

P.C. :

. By this Petition, the petitioner seeks issuance of a Writ of mandamus to the Government directing it to recommence the proceedings of acquisition of the land for its industry under the provisions of the Land Acquisition Act, 1894. The petitioner also seeks a direction to the Government to forthwith cancel and withdraw its decision dated 29th November, 2003 to discontinue proceedings for acquisition of the land.

2. Few facts necessary for the decision are that the petitioner, by private negotiations, purchased about 460 hectares of land at village Dolvi, Taluka Pen, for setting up of a steel plant. The petitioner needed another 92.56 hectares land for its project. The petitioner, however, could not purchase the required 92.56 hectares of land by private negotiations as the owners were either not willing to sell or were demanding exorbitant price. The petitioner, therefore, by it's letter dated 12th October, 2000, approached the Government of Maharashtra requesting it to acquire 92.56 hectares of land under the provisions of Land Acquisition Act, 1894. The Government initially acceded to the request and issued a Notification under Section 4 of the Land Acquisition Act on 11th July, 2002. However, in view of the opposition by the local residents the Government convened an internal meeting of its officers on 29th November, 2003. In the meeting dated 29th November, 2003, the Government decided not to pursue the acquisition of the land on the ground that the declaration under Section 6 was not made within the statutory period of one year of the Notification under Section 4 and in the circumstances the acquisition proceedings had lapsed. The Government's decision was informed to the petitioner on 5th April, 2004. The petitioner has, therefore, filed this Writ Petition for

the mandamus as above.

3. We have serious reservations about our power to issue a Writ of Mandamus directing the Government to acquire lands of its citizens for the private purposes of a private industry especially when the Government, in its wisdom and policy, chooses not so to do. The Land Acquisition Act (for short "the Act") empowers the Government to acquire private property for public purposes. The Act also empowers the Government to acquire the property for the purposes of a company, and the procedure to be followed for acquisition of land for companies is set out in Chapter VII of the Act. It is, however, a prerogative of the Government to take a decision whether to acquire any land for a company or require it to purchase land by private negotiations. No right is created in favour of a company to get private property of the citizens acquired for its needs. As such, in our view, mandamus cannot be issued to the Government, compelling it to acquire the land. Assuming that we have the power we are not inclined to exercise it for reasons, more than one.

4. Firstly, the persons whose lands the petitioner desires to be acquired are not made parties to the Petition. Issuing of mandamus in the form prayed

by the petitioner is likely to injuriously affect their interest. Such an order cannot be passed without they being heard in the matter. Secondly, the decision of the Government not to pursue the acquisition proceedings was taken on 29th November, 2003. Even according to the petitioner, the decision was communicated to the petitioner on 5th April, 2004. The present Petition has been filed on 7th July, 2006 i.e. after a lapse of 27 months of the knowledge of the decision of the Government. The delay has not bee satisfactorily explained in the Petition. Thirdly, the Notification under Section 4 of the Act was issued on 11th July, 2002. Under clause (ii) of the proviso to Section 6 the declaration under Section 6 of the Act had to be made within a period of one year i.e. on or before 11th July, 2003. The declaration under Section 6 was not made within the statutory period and, therefore, the Notification under Section 4 of the Act automatically lapsed. The Government, therefore, could not have proceeded with the acquisition and could not have issued the Notification under Section 6 on 29th November, 2003. In its meeting dated 29th November, 2003, the Government noted that the acquisition proceedings stood lapsed on account of the lapse of statutory period for the completion of the enquiry under Section 5A and making of the declaration under Section 6 of the Act. The

decision not to pursue the acquisition which was lapsed is, therefore, perfectly legal and, therefore, no Writ can be issued impugning the said decision. Lastly, Section 39 of the Act provides that the provisions of Section 6 to 16 and 18 to 37 shall not be put in force in acquisition of land for any company unless the company has executed the agreement hereinafter mentioned. Section 41 of the Act says that the company shall enter into an agreement with the appropriate Government relating to the matters provided in sub-clause (i) to (v) mentioned therein. From the averments made in ground No. (d) of the Petition, it is clear that the petitioner has not entered into any such agreement with the Government though it is stated that the petitioner had offered to enter into the agreement. In the absence of the agreement under Section 39 r/w Section 41 of the Act, the Government could not have made a declaration under Section 6 of the Act. Therefore, the petitioner itself is responsible for the lapsing of the land acquisition proceedings.

5. In the above circumstances, we find no merit in the Writ Petition and it is hereby rejected summarily.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]